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J. DOMINIC MONAHAN Attorney at Law

February 8, 2006

RECEIVED

Ms. Marlene H. Dortch, Secretary Federal Communications Commission Office of the Secretary 445 Twelfth Street, S.W. Washington, D.C. 20554

FEB - 8 2006

Federal Communications Commission Office of Secretary

Request for Exemption of Closed Captioning Rules

(47 CFR §79.1(f)), of Lush Productions, LLC

Dear Ms. Dortch:

There is transmitted herewith on behalf of Lush Productions, LLC, a Request for Exemption of the Closed Captioning Requirements on grounds compliance would result in an "undue burden" as set forth under §79.1(f) of the Commission's Rules.

Please be advised that this request was previously filed with the Commission's offices in Capitol Heights, Maryland on February 3, 2006. The purpose of this filing is to cure confirmation for outside vendors that in fact the request is pending before the Commission.

Should additional information be desired concerning this Request for Exemption, please contact the undersigned counsel. I have enclosed a self-addressed stamped envelope and an additional copy to be return to my office.

Respectfully Submitted,

LUSH PRODUCTIONS, INC.

Dominic Monahan, Its Counsel

JDM/nlk Enclosures

cc:

Frank Reskin (w/enclosure)

Before the FEDERAL COMMUNICATIONS COMMISSION Washington, D.C. 20554

FEB - 8 2006

In Re the Matter of

Federal Communications Commission Office of Secretary

Lush Productions, Inc.
Video Programming Accessibility

File No.

TO:

Chief, Media Bureau

REQUEST FOR EXEMPTION OF CLOSED CAPTIONING REQUIREMENTS

Lush Productions, LLC ("Lush"), through its counsel, respectfully submits this Request for Exemption from the Commission's closed captioning rules on grounds that compliance by Lush would result in an "undue burden" as set forth in the Commission's Rules (see 47 CFR §79.1(f)). In support, the following is shown.

Lush is a startup entity which was formed in the State of Oregon on December 29, 2005. As an initial startup it is in the process of developing a video production company which provides half-hour weekly real estate programs to various markets in the Western United States. These programs, entitled *This Week in Real Estate*, feature residences available for sale in each of the particular markets. As of December 31, 2005, Lush has

¹The format of each real estate program is tailored to each of the current 28 markets. Each program includes four two-minute intersticals and seven minutes for commercial inserts and public service announcements.

⁻¹⁻Request for Exemption of Closed Captioning Requirements

provided weekly real estate programs to television stations in 14 markets and anticipates adding 15 more markets by April 1, 2006. These programs are labor intensive and costly to produce because the production facilities and staff must handle video and pictorial material and content from various real estate services in each of the different markets, and distill and assemble the material into a finished program every five days. The finished program product is then overnighted to each of the 28 markets. ²

Only recently Lush became aware of the change in the Commission's rules which now require essentially 100% of all English language programming to be closed captioned. As set forth below, Lush simply does not have the present ability or resources to provide closed captioning.

To implement closed captioning of Lush's 28 weekly programs will require Lush to hire three additional employees at a minimum basic salary of \$36,000.00 per year, or \$108,000.00 in additional labor costs. In addition because of the expected growth to 29 markets within 60 days, Lush must purchase a minimum of three SDI and Analogue CC Encoders/Decoders at \$3,375.00 each, and associated software at \$4,995.00 for each unit. (This capacity is required because of the sheer number of different programs which must be produced each week.) As evidenced by the attached quote from Link Electronics the total cost is \$8,821.00 per captioning unit, or a total of \$26,463.00. (See Attachment 1) Together with the additional labor costs necessary to conduct closed

²To date the average cost of each of the 28 programs produced during the 2005 calendar year is \$80,810.00.

⁻²⁻Request for Exemption of Closed Captioning Requirements

which is available during the program. Ultimately Lush envisions profitability by late 2007.

Lush would point out that its business model is very much like that of a network providing a half hour real estate program addressing residential sales in each of the 14 markets it now serves and the additional 15 markets it expects to add to its network within the next 60 days. Given this model, Lush respectfully requests that the Commission, in its evaluation of this request, consider the automatic exemption from the closed captioning requirement which is extended to startup networks during the first four (4) years of operation (see §79.1(d)(9). Lush submits this is a persuasive factor relevant to this request.

Given the modest revenues of \$663,00.00 achieved by Lush in the year 2005, Lush also submits that the provisions of §79.1(d)(12) are also germane to this request. There a video provider automatically qualifies for an exemption of revenues er channel are less than \$3 million per year. Here, Lush's revenues in 2005 of \$663.000.00 failed that threshold by almost 80% and further demonstrate the undue burden such a requirement would impose on it.

Finally, Lush points out that it does not seek to permanently avoid closed captioning of *This Week in Real Estate*. In fact, it seeks exemption based on undue hardship for a period of only two (2) years, or until December 31, 2007, when it expects to be financially viable. Moreover, Lush Productions is willing to commit to providing closed captioning before the end of this two year period as such time as it achieves -4-Request for Exemption of Closed Captioning Requirements

profitability sufficient to acquire the closed captioning equipment and add the necessary personnel to produce the closed captioning programming.

DATED this _____ day of February, 2006.

Respectfully Submitted,

LUSH PRODUCTIONS, INC.

⁻⁵⁻Request for Exemption of Closed Captioning Requirements

DECLARATION

I, FRANK RESKIN, declare under penalty of perjury, that I have read the attached Request for Waiver of Closed Captioning Requirements and to the best of my knowlege it is a true and correct statement of facts.

DATED this 2nd day of February, 2006.

Frank Reskin

Attachments:

Estimate from Lenk Electronics 2 financial statements

⁻⁶⁻Request for Waiver of Closed Captioning Requirements

QUOTATION



ISSUING OFFICE: Link Electronics, Inc. Stuart Brenner 19 Crockett Irvine, CA 92620 Phone: (949) 981-3924

FAX: (949) 733-3014

EMAIL: stuartbrenner@pacbell.net

Rob Rector Lush Productions 5700 River Road Santa Rosa, CA 95401

Phone

(707) 570-0600

EMAIL FAX#

QUOTE # 012306sb

T	erms of Sale:	Net 30-Days:FOB, Cape Girardeau MO:Delivery 30 Days A	N RO	Discount	25%
QTY	ITEM	DESCRIPTION	LIST EACH	COST EACH	COST TOTAL
1	PDA-895	SDI & Analog CC Encoder/Decoder	\$4,500.00	\$3,375.00	\$3,375.00
1	Modem OP/2	Optional internal telephone modem for 886,890,895	\$180.00	\$126.00	\$126.00
1	CPC-710	Closed Captioning software for Windows (real-time and of	ff-line)	\$4,995.00	\$4,995.00
1	TCR	Adrienne Time Code Reader Card for VITC and LTC		\$325,00	\$325 .00
					· · · · · · · · · · · · · · · · · · ·
·		Strott Brenner		TOTAL	\$8,821.00
Auth	orization:	Stuart Brenner	<u></u>	Date:	23-Jan-06
Acceptance:			··········	Date: _	
Print	ed Name/Title	Signature :			
		- 			

PACE - LOCAL CONTROL - LOCAL

October 4, 2005

Lush Productions, LLC Klamath Falls, Oregon

We have compiled the statement of revenue and expenses – of Lush Productions, LLC (a Limited Liabilities Company) for September 30, 2005 – income tax basis in the accompanying prescribed form in accordance with Statements on Standards for Accounting and Review Services issued by the American Institute of Certified Public Accountants. The financial statements have been prepared on the income tax basis of accounting (accrual method), which is a comprehensive basis of accounting other than generally accepted accounting principles. The income tax basis of accounting requires that depreciable property be depreciated in accordance with modified accelerated cost recovery rules. Under generally accepted accounting principles, the property would be depreciated using the straight line method of accounting.

Our compilation was limited to presenting in the form prescribed by Lush Productions, LLC information that is the representation of management. We have not audited or reviewed the income statement and supplementary information referred to above and, accordingly, do not express an opinion or any other form of assurance on them.

Management has elected to omit substantially all of the disclosures ordinarily included in financial statements prepared on the income tax basis of accounting. If the omitted disclosures were included in the financial statements, they might influence the user's conclusions about the Company's revenues and expenses. Accordingly, these financial statements are designed for those who are informed about such matters.

We are not independent with respect to Lush Productions, LLC.

ISCO, LLP

Certified Public Accountants

October 4, 2005

Lush Productions LLC Balance Sheet

As of September 30, 2005

	Sep 30, 05
ASSETS	
Current Assets	
Checking/Savings	2 400 00
US Bank Chocking - 7522	2,866.88
Total Checking/Savings	2,866.88
Accounts Receivable	407 574 65
Accounts Receivable	167,334.53
Total Accounts Receivable	167,334.53
Other Current Assets Contract in Progress	1,018,773.34
Total Other Current Assets	
total Other Cullent Assets	1,018,773.34
Total Current Assets	1,188,974.75
Fixed Assets	
Office Equipment	87,420.80
Total Fixed Assets	87,420.80
TOTAL ASSETS	1,276,396.55
LIABILITIES & EQUITY	7.5 To 10.5 To
Liabilities	
Current Liabilities	
Accounts Payable	50 504 55
Accounts Payable	22,368.07
Total Accounts Payable	22,368.07
Credit Cards American Express	9,960,99
Total Credit Cards	9,960.99
Other Current Liabilities	9,300.89
Current Liabilities	149,800,65
Deffered Contract in Progress	1,016,773,34
Payroll Liabilities	33,088.35
Total Other Current Liabilities	1,200,662.34
Total Current Liabilities	1,232,991.40
Long Term Liabilities	
Long Term Liability	101,739.87
Total Lang Term Liabilities	101,739.87
Total Liabilities	£ 55 4 70 4 00
	1,334,731,27
Equity Arturo Lorente - Capital	60 005 05
Bette's Boy Production - Capita	50,000.00
Charles LaBuwi - Capital	50,000,00 60,000,001
Haskins Proporties, LLC-Capital	50,000.00
JJJ&J, LLC - Capital	50,000.00
Kasha Enterprises LLC - Capital	709,000.00
Mougins Enterprises LLC- Capita	200,000.00
Thomas Jayne - Capital	100,000.00
Combined ently losses retained	-335,192.64
Net Income	-1,032,143,08
Total Equity	-58,335.72
TOTAL LIABILITIES & EQUITY	1 276 205 55
The second particular control and the Land Control of the Land Con	1,276,395.55

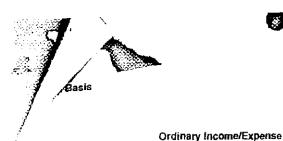
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Lush Productions LLC Profit & Loss

January through September 2005

	Jan - Sop 05
Ordinary Income/Expense Income	
Focus Group Income	23,200.00
Video Production Income	611,909.88
Total Income	635,109,88
Cost of Goods Sold	
Advertising Costs	6,330.02
Film Production Costs	591, 93 7.50
Focus Group Costs	16,894.94
Video Production Costs	40,147.50
Total COGS	655,309.96
Gross Profit	-20,200.08
Expense	
Bank Service Charges	1,212.21
CarlTruck Expense	501,50
Conference Registration	90.00
Depreciation Expense	26,984.38
Dues and Subscriptions	1,093.95
Guaranteed Payments	109,000.00
insurance	46,230,17
Interest Expense	2,943.31
Marketing & Promotional Expense	2,280.00
Office Supplies	31,703.75
Payroll Expenses	430,548.71
Payroll Tax Expense	44,091.70
Postage and Delivery	13,753.46
Professional Development	1,570.00
Professional Fees	53,895.04
Rent	28,890.63
Repairs	493.18
Training & development	370.00
Travel & Entertainment	199,179.21
Utilities	17,111.80
Total Expense	1,011,943.00
Net Ordinary Income	-1,032,143.08
Net Income	-1,032,143.08



Income

Total Income

4300 · Film Production Income

4420 - Real Estate fees

4410 · Ad fees

4400 · Video Production Income

Total 4400 · Video Production Income

Lush Productions LLC Profit & Loss

January through December 2005

Jan - Dec 05 1,500.00 80,205.31 581,325.24 661,530.55 663,030.55

Cost of Goods Sold
5100 - Advertising Costs 6,330.02
5300 - Film Production Costs
5301 - Airtime 808,561.84
5302 - Voice Overs 8,214.50

 5300 · Film Production Costs · Other
 35,391.82

 Total 5300 · Film Production Costs
 852,168.16

 5400 · Video Production Costs
 48,577.50

 Total COGS
 907,075.68

Gross Profit -244,045.13

 Expense
 395.00

 6100 · Marketing & Promotional Expense
 395.00

 6120 · Bank Service Charges
 2,121.69

 6130 · Car/Truck Expense
 622.30

Total 6130 · Car/Truck Expense 622.30
6150 · Depreciation Expense 43,505.00
6160 · Dues and Subscriptions 1,066.00

6180 · Insurance 6192 · Medical Insurance 71,327.69 Total 6180 · Insurance 71,327.69

6245 - Miscellaneous 163.80 6255 - Postage and Delivery 30,319.48 6260 - Conference Registration 690.00 6265 - Professional Development 6,050.00 6270 - Professional Fees

 6271 · Legal Fees
 500.00

 6272 · Accounting Fees
 50,016.27

 6274 · Independent Contractor
 14,333.34

 6275 · janitorial
 1,678.00

 6276 · Consulting Fees
 25,398.38

 6270 · Professional Fees - Other
 17,207.70

Total 6270 · Professional Fees 109,133.69

6300 - Rent 6301 - Rental Car 11,948.99

6300 · Rent - Other 22,355.35 **Total 6300 · Rent** 34,304.34

Total 6300 · Rent 34,304.34

 6311 · Computer Repairs
 493.18

 Total 6310 · Repairs
 493.18

6330 · Office Supplies
6331 · Computer 11,299.05
6332 · General 24,628.33
6333 · Printing and Reproduction 273.42

6330 · Office Supplies · Other 6,145.99

Total 6330 · Office Supplies 42,346.79

6340 · Training & development 370.00

Lush Productions LLC
Profit & Loss

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January through December 2005

Jan - Dec 05

Ordinary Income/Expense	- -
Income	•
4300 · Film Production Income	1,500,00
4400 - Video Production Income 4410 - Ad fees	PO 205 24
4420 · Real Estate fees	80,205.31 581,325.24
	No. 10 . 10 . 10 . 10
Total 4400 · Video Production Income	661,530.55
Yotal Income	663,030.55
Cost of Goods Sold 5100 · Advertising Costs	6,330.02
5300 · Film Production Costs	0,330.02
5301 - Airtime	808,561.84
5302 · Voice Overs	8,214.50
5300 · Film Production Costs - Other	35,391.82
Total 5300 · Film Production Costs	852,168.16
5400 · Video Production Costs	48,577.50
Total COGS	907,075.68
	The second secon
Gross Profit	-244,045.13
Expense	
6100 - Marketing & Promotional Expense	395.00
6120 · Bank Service Charges	2,121.69
6130 · Car/Truck Expense	
6132 · Gas	622.30
Total 6130 · Car/Truck Expense	622,30
6150 · Depreciation Expense	43,505,00
6160 · Dues and Subscriptions	1,066.00
6180 · Insurance	
6192 - Medical Insurance	71,327.69
Total 6180 · Insurance	71,327.69
6245 · Miscellaneous	163.80
6255 · Postage and Delivery	30,319.48
6260 - Conference Registration	690.00
6265 - Professional Development	6,050.00
6270 · Professional Fees	500.00
6271 - Legal Fees 6272 - Accounting Fees	500.00 50,016.27
6274 · Independent Contractor	14,333.34
6275 · janitoriai	1,678.00
6276 · Consulting Fees	25,398.38
6270 - Professional Fees - Other	17,207.70
Total 6270 · Professional Fees	109,133.69
6300 · Rent	
6301 · Rental Car	11,948.99
6300 · Rent - Other	22,355.35
Total 6300 · Rent	34,304.34
6310 - Repairs 6311 - Computer Repairs	493.18
Total 6310 · Repairs	493.18
6330 · Office Supplies	*****
6331 · Computer 6332 · General	11,299.05
6333 · Printing and Reproduction	24,628.33 273.42
6330 · Office Supplies - Other	6,145.99
••	
Total 6330 · Office Supplies	42,346.79
6340 · Training & development	370.00

6:32 PM 01/05/06 Cash Basis

Lush Productions LLC Profit & Loss January through December 2005

Jan - Dec 05

	Jan - Dec 05
6350 · Travel & Entertainment	•
6351 · Entertainment	1,960.98
6352 · Meals	38,886.70
	· ·
6353 · Travel	125,792.42
6354 · Fuel	471.92
6355 · Internet	447.23
6356 · Lodging	104,316.01
6357 · Other	3,167.67
6358 · Parking	3,411.73
6359 · Taxi	3,703.80 26.36
6350 - Travel & Entertainment - Other	∠0.30
Total 6350 · Travel & Entertainment	282,184.82
6560 · Payroll Expenses	619,843.86
6570 - Payroll Tax Expense	61,788.92
6580 · Guaranteed Payments	
· 6581 · Kasha Enter-Guaranteed pmts	
6581.1 · Car Allowance	2,500.00
6581 · Kasha Enter-Guaranteed pmts - Other	33,000.00
Total 6581 · Kasha Enter-Guaranteed pmts	35,500.00
6582 · Bette's Boy Prod-Guaranteed pmt	
6582.1 · Car Allowance	3,000.00
6582 · Bette's Boy Prod-Guaranteed prot · Other	30,000.00
•	30,000.00
Total 6582 · Bette's Boy Prod-Guaranteed pmt	33,000.00
6583 · Mougins Enter-Guaranteed pmts	
6583.1 · Car Allowance	2,500.00
6583 · Mougins Enter-Guaranteed pmts - Other	38,000.00
Total 6583 · Mougins Enter-Guaranteed pmts	40,500.00
Total 6583 · Mougins Enter-Guaranteed pmts Total 6580 · Guaranteed Payments	40,500.00 109,000.00
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Total 6580 · Guaranteed Payments	and the second s
Total 6580 · Guaranteed Payments 6600 · Utilities	109,000.00
Total 6580 · Guaranteed Payments 6600 · Utilities 6601 · Internet	109,000.00 4,216.44
Total 6580 · Guaranteed Payments 6600 · Utilities 6601 · Internet 6602 · Natural gas	109,000.00 4,216.44 726.83
Total 6580 · Guaranteed Payments 6600 · Utilities 6601 · Internet 6602 · Natural gas 6603 · Power	109,000.00 4,216.44 726.83 1,022.22
Total 6580 · Guaranteed Payments 6600 · Utilities 6601 · Internet 6602 · Natural gas 6603 · Power 6604 · Trash	109,000.00 4,216.44 726.83 1,022.22 97.50
Total 6580 · Guaranteed Payments 6600 · Utilities 6601 · Internet 6602 · Natural gas 6603 · Power 6604 · Trash 6605 · Water	109,000.00 4,216.44 726.83 1,022.22 97.50
Total 6580 · Guaranteed Payments 6600 · Utilities 6601 · Internet 6602 · Natural gas 6603 · Power 6604 · Trash 6605 · Water 6606 · Telephone	109,000.00 4,216.44 726.83 1,022.22 97.50 123.05
Total 6580 · Guaranteed Payments 6600 · Utilities 6601 · Internet 6602 · Natural gas 6603 · Power 6604 · Trash 6605 · Water 6606 · Telephone 6606-1 · Cell Phone	109,000.00 4,216.44 726.83 1,022.22 97.50 123.05
Total 6580 · Guaranteed Payments 6600 · Utilities 6601 · Internet 6602 · Natural gas 6603 · Power 6604 · Trash 6605 · Water 6606 · Telephone 6606-1 · Cell Phone 6606 · Telephone - Other	109,000.00 4,216.44 726.83 1,022.22 97.50 123.05 6,634.19 7,156.20
Total 6580 · Guaranteed Payments 6600 · Utilities 6601 · Internet 6602 · Natural gas 6603 · Power 6604 · Trash 6605 · Telephone 6606 · Telephone 6606 · Telephone · Other Total 6606 · Telephone	109,000.00 4,216.44 726.83 1,022.22 97.50 123.05 6,634.19 7,156.20 13,790.39
Total 6580 · Guaranteed Payments 6600 · Utilities 6601 · Internet 6602 · Natural gas 6603 · Power 6604 · Trash 6605 · Water 6606 · Telephone 6606 · Telephone - Other Total 6606 · Telephone 6607 · Telephone & Fax Total 6600 · Utilities	109,000.00 4,216.44 726.83 1,022.22 97.50 123.05 6,634.19 7,156.20 13,790.39 9,749.86
Total 6580 · Guaranteed Payments 6600 · Utilities 6601 · Internet 6602 · Natural gas 6603 · Power 6604 · Trash 6605 · Water 6606 · Telephone 6606-1 · Cell Phone 6606 · Telephone · Other Total 6606 · Telephone 6607 · Telephone	109,000.00 4,216.44 726.83 1,022.22 97.50 123.05 6,634.19 7,156.20 13,790.39 9,749.86
Total 6580 · Guaranteed Payments 6600 · Utilities 6601 · Internet 6602 · Natural gas 6603 · Power 6604 · Trash 6605 · Water 6606 · Telephone 6606 · Telephone 6606 · Telephone 6607 · Telephone 6607 · Telephone 6607 · Telephone & Fax Total 6600 · Utilities 8100 · Interest Expense	109,000.00 4,216.44 726.83 1,022.22 97.50 123.05 6,634.19 7,156.20 13,790.39 9,749.86 29,726.29 2,753.81 498.35
Total 6580 · Guaranteed Payments 6600 · Utilities 6601 · Internet 6602 · Natural gas 6603 · Power 6604 · Trash 6605 · Water 6606 · Telephone 6606 · Telephone 6606 · Telephone 6607 · Telephone 6607 · Telephone 6600 · Utilities 8100 · Interest Expense 8110 · Loan Interest 8100 · Interest Expense - Other	109,000.00 4,216.44 726.83 1,022.22 97.50 123.05 6,634.19 7,156.20 13,790.39 9,749.86 29,726.29 2,753.81 498.35
Total 6580 · Guaranteed Payments 6600 · Utilities 6601 · Internet 6602 · Natural gas 6603 · Power 6604 · Trash 6605 · Water 6606 · Telephone 6606-1 · Cell Phone 6606 · Telephone · Other Total 6606 · Telephone 6607 · Telephone & Fax Total 6600 · Utilities 8100 · Interest Expense 8110 · Loan interest	109,000.00 4,216.44 726.83 1,022.22 97.50 123.05 6,634.19 7,156.20 13,790.39 9,749.86 29,726.29 2,753.81 498.35
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Total 6580 · Guaranteed Payments 6600 · Utilities 6601 · Internet 6602 · Natural gas 6603 · Power 6604 · Trash 6605 · Water 6606 · Telephone 6606 · Telephone 6606 · Telephone 6607 · Telephone 6607 · Telephone & Fax Total 6600 · Utilities 8100 · Interest Expense 8110 · Loan Interest 8100 · Interest Expense	109,000.00 4,216.44 726.83 1,022.22 97.50 123.05 6,634.19 7,156.20 13,790.39 9,749.86 29,726.29 2,753.81 498.35 3,252.16
Total 6580 · Guaranteed Payments 6600 · Utilities 6601 · Internet 6602 · Natural gas 6603 · Power 6604 · Trash 6605 · Water 6606 · Telephone 6606 · Telephone 6606 · Telephone 6607 · Telephone 6607 · Telephone 8 Fax Total 6600 · Utilities 8100 · Interest Expense 8110 · Loan Interest 8100 · Interest Expense Total 8100 · Interest Expense	109,000.00 4,216.44 726.83 1,022.22 97.50 123.05 6,634.19 7,156.20 13,790.39 9,749.86 29,726.29 2,753.81 498.35 3,252.16 1,448,705.01
Total 6580 · Guaranteed Payments 6600 · Utilities 6601 · Internet 6602 · Natural gas 6603 · Power 6604 · Trash 6605 · Water 6606 · Telephone 6606 · Telephone 6606 · Telephone 6606 · Telephone 6607 · Telephone 6607 · Telephone 6600 · Utilities 8100 · Interest Expense 8110 · Loan Interest 8100 · Interest Expense 7 otal 8100 · Interest Expense	109,000.00 4,216.44 726.83 1,022.22 97.50 123.05 6,634.19 7,156.20 13,790.39 9,749.86 29,726.29 2,753.81 498.35 3,252.16 1,448,705.01
Total 6580 · Guaranteed Payments 6600 · Utilities 6601 · Internet 6602 · Natural gas 6603 · Power 6604 · Trash 6605 · Water 6606 · Telephone 6606 · Telephone 6606 · Telephone · Other Total 6606 · Telephone 6607 · Telephone & Fax Total 6600 · Utilities 8100 · Interest Expense 8110 · Loan Interest 8100 · Interest Expense Total 8100 · Interest Expense Total 8100 · Interest Expense	109,000.00 4,216.44 726.83 1,022.22 97.50 123.05 6,634.19 7,156.20 13,790.39 9,749.86 29,726.29 2,753.81 498.35 3,252.16 1,448,705.01
Total 6580 · Guaranteed Payments 6600 · Utilities 6601 · Internet 6602 · Natural gas 6603 · Power 6604 · Trash 6605 · Water 6606 · Telephone 6606 · Telephone 6606 · Telephone 6607 · Telephone & Fax Total 6600 · Utilities 8100 · Interest Expense 8110 · Loan Interest 8100 · Interest Expense Total 8100 · Interest Expense Total Expense Net Ordinary Income Other Income/Expense Other Income/Expense	109,000.00 4,216.44 726.83 1,022.22 97.50 123.05 6,634.19 7,156.20 13,790.39 9,749.86 29,726.29 2,753.81 498.35 3,252.16 1,448,705.01 -1,692,750.14

Federal Communications Commission 445 12th St., S.W. Washington, D.C. 20554

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DA 06-365

Released: February 16, 2006

CONSUMER & GOVERNMENTAL AFFAIRS BUREAU ACTION

REQUEST FOR EXEMPTION FROM COMMISSION'S CLOSED CAPTIONING RULES CGB-CC-0426

Lush Productions, LLC has filed a petition for exemption from the closed captioning requirements, pursuant to Section 79.1 of the Commission's rules, 47 C.F.R. § 79.1, for its program "This Week in Real Estate." Petitioner claims that compliance would impose an undue burden, as defined in Section 79.1(f) of the Commission's rules, 47 C.F.R. § 79.1(f).

Comments and oppositions are due within 30 days from the date of this public notice. The case identifier, CGB-CC-0426 must be placed on all filings. Comments and oppositions sent via e-mail to the Commission will be considered informal and are not part of the official record.

Filing Instructions -

An original and two (2) copies of all comments, oppositions, and replies must be filed with the Commission.

Filings can be sent by hand or messenger delivery, commercial overnight courier, or by first class or overnight U.S. Postal Service mail (although we continue to experience delays in receiving U.S. Postal Service mail). All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission, Atm: CGB Room 3-B431.

- * The Commission's contractor will receive <u>hand-delivered or messenger-delivered</u> paper filings for the Commission's Secretary at 236 Massachusetts Avenue, N.E., Suite 110, Washington, DC 20002. The filing hours at this location are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of <u>before</u> entering the building.
- * Commercial overnight mail (other than U.S. Postal Service, Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743.
- * <u>U.S. Postal Service</u> first-class, Express, and Priority mail should be addressed to 445 12th Street, SW, Washington, DC 20554.

In addition, comments and oppositions filed must indicate that they have been served on the petitioner. All comments and oppositions must be served on petitioner at:

captioning, this will increase Lush's production expenses well in excess of \$134,000.00. This figure does not include the additional expenses for the software and equipment that will be required to integrate the captioning units into the video production equipment already on hand. This equipment will cost approximately \$9,500.00 for a total initial outlay of \$142,500.00 to implement closed captioning.

Lush's precarious financial position attached are two financial statements for Lush. One was prepared by ISCO, Certified Public Accountants in Klamath Falls, Oregon, demonstrating that during its first nine months of operation in 2005, Lush suffered operating losses of \$1,032,443.08 on income of \$635,109.88. An extended profit and loss statement for the entire year of 2005 shows that losses by year's end had increased to \$1,692,750.14 on a final year-end on income of \$663.030.55. (See Attachments 2 and 3).

Given that Lush's revenue for the January-December 2005 year realized a total income of only \$663,000.00, the added cost of closed captioning would exceed more than 20% of revenues.³ It is Lush's goal to increase the number of markets in which it sells its program to 50 by the end of the year 2006. However, the addition of each additional ten (10) markets will require employment of five (5) employees. At the same time, Lush anticipates growing its revenue by the sale of ad time during the seven minute

³Section 79.1(d)(ii) exempts video programming providers from being required to expend any money to caption video programming if such expenditure would exceed 2% of the gross revenues received from that channel during the previous year.

⁻³⁻Request for Exemption of Closed Captioning Requirements

Lush Productions, LLC c/o J. Dominic Monahan Luvaas Cobb P.O. Box 10747 Eugene, OR 97440-2747

An original and two (2) copies of petitioner's reply to the comments in the record is due 20 days after the comment deadline. Electronic filing is not available at this time. In addition, replies to comments or oppositions shall be served on the commenting or opposing party and shall include a certification that the commenter was served with a copy.

All comments, oppositions, and replies must contain a detailed, full showing, supported by affidavit, of any facts or considerations relied on.

The petition, comments, oppositions and replies will be available for public inspection in the Commission's Reference Information Center:

445 12th Street, S.W. Washington, D.C. 20554 202-418-7092

The petition, public notice, and decision (when issued) can also be found at http://www.fcc.gov/cgb/dro/caption.html.

To request materials in accessible formats for people with disabilities (braille, large print, electronic files, audio format), send an e-mail to fcc504@fcc.gov or call the Consumer & Governmental Affairs Bureau at 202-418-0530 (voice), 202-418-0432 (TTY). This *Public Notice* can also be downloaded in Word and Portable Document Format at http://www.fcc.gov/cgb/dro.

Consumer & Governmental Affairs Bureau Contact: Amelia Brown (202) 418-2799 (voice), (202) 418-7804 (TTY); e-mail amelia.brown@fcc.gov or Traci Randolph (202) 418-0569 (voice), (202) 418-0537 (TTY); e-mail traci.randolph@fcc.gov.